

HOUSE BILL REPORT

HB 1499

As Reported by House Committee On:
Public Safety
General Government & Information Technology

Title: An act relating to vulnerable adults.

Brief Description: Concerning vulnerable adults.

Sponsors: Representatives Goodman, Jinkins, Johnson, Orwall, Appleton, Lytton and Tharinger.

Brief History:

Committee Activity:

Public Safety: 1/28/15, 1/30/15 [DPS], 1/19/16, 1/22/16 [DP3S];

General Government & Information Technology: 2/20/15, 2/24/15 [DP2S(w/o sub PS)],
2/5/16 [DP3S(PS)].

Brief Summary of Third Substitute Bill

- Makes it a Criminal Mistreatment offense when a person, with criminal negligence (instead of recklessly) withholds the basic necessities of life from a child or dependent person.
- Creates the crime of Theft from a Vulnerable Adult in the first and second degree.
- Adds the crimes of Criminal Mistreatment and Theft from a Vulnerable Adult to the list of crimes against persons.
- Limits the statute of limitations for the crime of Theft from a Vulnerable Adult to six years.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Appleton, Griffey, Moscoso and Wilson.

Staff: Yvonne Walker (786-7841).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Criminal Mistreatment. A person commits Criminal Mistreatment if he or she:

- is the parent of a child, is a person entrusted with the physical custody of a child or dependent person, or is employed to provide a child or dependent person with the basic necessities of life; and
- withholds the basic necessities of life from the child or dependent person.

The penalty for Criminal Mistreatment depends on the intent of the perpetrator and the harm caused to the victim. For example, it is Criminal Mistreatment in the:

- first degree, a class B felony offense, if the perpetrator recklessly causes great bodily harm to the child or dependent person;
- second degree, a class C felony offense, if the person recklessly creates an imminent and substantial risk of death or great bodily harm or recklessly causes substantial bodily harm to the child or dependent person; and
- third degree, a gross misdemeanor offense, if the person with criminal negligence, creates an imminent and substantial risk of substantial bodily harm or negligently causes substantial bodily harm to the child or dependent person.

Theft. Washington's Theft statute punishes a person based upon the value of the property stolen. A person commits Theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services;
- by deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services; or
- appropriates lost or misdelivered property or services of another with intent to deprive him or her of the property or services.

Theft in the first degree, a class B felony offense, occurs when a person commits Theft of property or services valued in excess of \$5,000. Theft in the second degree, a class C felony offense, occurs when a person commits Theft of property or services valued in excess of \$750, but not exceeding \$5,000. Theft in the third degree, a gross misdemeanor offense, occurs when a person commits Theft of property or services valued less than \$750.

Crimes Against Persons. The standards for prosecutorial discretion in the Sentencing Reform Act contain a list of "crimes against persons." Some of the crimes on this list include: Aggravated Murder; first and second degree Murder; first and second degree Manslaughter; first and second degree Kidnapping; first, second, and third degree Rape; first and second degree Robbery; first degree Arson; first degree Burglary; and first, second, and third degree Assault. If a crime is designated as a 'crime against persons' additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, may be subject to a mandatory term of community custody, and his or her earned release may be limited.

Statutes of Limitations. Statutes of limitations are legislative declarations of the period after the commission or discovery of an offense within which actions may be brought on certain claims, or during which certain crimes may be prosecuted. Once a statute of limitations has expired, there is in place an absolute bar to prosecution.

Statutes of limitations vary according to the crime. In general, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felony offenses must be prosecuted within three years of the commission of the crime. However, the limitation period may be varied by statute, and there is no limitation on the time within which a prosecution must commence for the crimes of Murder, Homicide by Abuse, Vehicular Homicide, or for the crimes of Vehicular Assault, Hit and Run injury-accident, or Arson, if a death results. If no period of limitation is statutorily declared for a felony offense, no prosecution may be commenced more than three years after its commission.

Summary of Third Substitute Bill:

The Legislature finds that seniors and people with disabilities face a growing threat of financial exploitation and abuse. It is the intent of the act to hold accountable those perpetrators who commit Theft from seniors and people with disabilities by increasing penalties, reducing barriers to prosecution, and expanding the scope of protection for vulnerable adults.

Criminal Mistreatment. Criminal Mistreatment in the first degree occurs if the person with criminal negligence (instead of recklessly) causes great bodily harm to the child or dependent person. Criminal Mistreatment in the second degree occurs if the person with criminal negligence (instead of recklessly) creates an imminent and substantial risk of death or great bodily harm or causes substantial bodily harm. Criminal Mistreatment in the third degree is limited to instances where a person with criminal negligence creates an imminent and substantial risk of substantial bodily harm (the element of negligently causing substantial bodily harm is eliminated).

Theft. An additional element is added to the crime of Theft. A person can also commit Theft if he or she obtains control over the property or services of a vulnerable adult using undue influence. "Undue influence" is defined as unfair persuasion that seriously impairs the free exercise of judgment.

Two new crimes relating to Theft from a Vulnerable Adult are created. Theft from a Vulnerable Adult in the first degree (a seriousness level VI, class B felony offense) occurs if the value of the property or services exceed \$5,000 in value. Theft from a Vulnerable Adult in the second degree (a seriousness level I, class C felony offense) occurs if the value of the property exceeds \$750, but is \$5,000, or less.

A "vulnerable adult" is a person 18 years or older who is particularly vulnerable or incapable of resistance. A person is particularly vulnerable if he or she is more vulnerable to the commission of a crime than the typical victim of that same crime. The defendant must have known or should have known that the victim was a vulnerable adult.

Crimes Against Persons. The crimes of Criminal Mistreatment in the first and second degree, and Theft from a Vulnerable Adult in the first and second degree, are added to the list of crimes against persons.

Statute of Limitations. The statute of limitations for the crime of Theft from a Vulnerable Adult is limited to six years after the commission of the offense.

Third Substitute Bill Compared to Original Bill:

An intent section is added to the act. The family member exception is removed from the definition of "undue influence." Theft of a Vulnerable Adult in the second degree is made a seriousness level I offense instead of a seriousness level IV offense. Other technical corrections are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Third Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Financial abuse and physical abuse of vulnerable adults are both very common. Older people who are abused, neglected, or financially exploited are three times more likely to die of a premature death. This bill will provide an opportunity to toughen criminal penalties and also prosecute more cases.

This bill creates the crime of Theft from a Vulnerable Adult which will bring Washington in line with other states that have already implemented such crimes. These crimes are often committed in private and victims often feel ashamed, afraid, and embarrassed. The six-year statute of limitations is critical in allowing for these crimes to be prosecuted as most of these cases are not found or reported for years. Approximately 30 percent of the 24,000 cases that Adult Protective Services handles relates to financial exploitation. In 2011 a study found that the annual financial abuse of victims of elder abuse was estimate to be over \$2.9 billion. These crimes are happening in increasing numbers.

This bill also changes the intent element for Criminal Mistreatment. Current statute defines Criminal Mistreatment as reckless and most people do not think of inaction as being reckless. This makes it difficult for a jury today to get to a determination of recklessness on a neglect case. This is the reason the elements of the crime of Criminal Mistreatment needs to be reduced to criminal negligence.

This bill gives prosecutors additional tools to prosecute offenders and protect vulnerable adults in Washington.

(Opposed) Abuse of vulnerable adults is a problem and it should be addressed. However, in this bill the standard for Criminal Mistreatment is reduced from reckless to criminal negligence because prosecutors are having a hard time convicting offenders they should look at other steps instead of trying to reduce the standards. A suggestion would be to provide more funds for investigators and detectives. Reducing the standard is not the answer.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Natalie King, Office of the Attorney General; Bill Moss, Department of Social and Health Services; and Page Ulrey, King County Prosecutor's Office.

(Opposed) Sarah McFadden, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The third substitute bill by Committee on Public Safety be substituted therefor and the third substitute bill do pass. Signed by 7 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Johnson, Morris and Senn.

Staff: Rachelle Harris (786-7137).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Public Safety:

No changes were recommended by the committee.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Third Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.